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**IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S  
COMPLIANCE WITH § 271 OF THE  
TELECOMMUNICATIONS ACT OF 1996**

Docket No. T-00000A-97-0238

**AT&T'S POST-WORKSHOP BRIEF  
ON THE RETAIL PARITY  
EVALUATION DRAFT REPORT**

AT&T Communications of the Mountain States, Inc. and TCG Phoenix  
(collectively, "AT&T") hereby file their Post-Workshop Brief on the Retail Parity  
Evaluation Draft Report.

## **I. INTRODUCTION**

Cap Gemini Ernst & Young ("CGE&Y") made the following overall conclusion  
in its Retail Parity Evaluation:

[T]he experience of a CLEC using the various available OSS interfaces is substantially the same than that of Qwest performing the similar activities using their own OSSs. Most importantly, we find that Qwest provides the CLECs with nondiscriminatory access to its operation support systems for the purposes of initiating not only service request but maintenance and repair functions and transactions.<sup>1</sup>

AT&T believes that the record shows that CGE&Y had insufficient evidence to make this conclusion. In fact, AT&T believes that the evidence shows that Qwest is not providing

<sup>1</sup> TR 39, ll. 10-18 (Aug. 7, 2001). All transcript references are to the oral testimony of Mr. Bob Dryzgula unless otherwise noted. See also the Final Report Retail Parity Evaluation, Version 2.0, July 6, 2001, at 7 ("RPE Report").

competitive local exchange carriers ("CLECs") with nondiscriminatory access to its operations support systems ("OSS").

CGE&Y stated that its conclusions "were based upon three types of evaluations, qualitative, quantitative and timeliness, all of which were taken into account whenever possible."<sup>2</sup> AT&T believes that the record shows that Qwest performance to CLECs in comparison to its performance for retail customers is lacking in all three of the areas that CGE&Y stated it considered in making its overall conclusion. With negative findings in each of the three evaluation types, it is inappropriate for CGE&Y to reach an overall conclusion of nondiscriminatory access.

In addition to reaching overall conclusions that were not supported by the underlying findings, CGE&Y failed to perform key activities. Without completing the evaluation activities required by the Test Standards Document ("TSD"), it is premature for CGE&Y to reach any conclusion, much less a conclusion of nondiscriminatory access.

## **II. ARGUMENTS**

### **A. CGE&Y Failed to Complete Activities Required by the TSD.**

#### **1. CGE&Y Failed to Count the Cumulative Number of Auto-Populated or Selectable Fields.**

Section 4.2.3(a) of the TSD, version 2.8, contains the following requirement:

The cumulative number of auto populated or selectable fields (previously auto-populated from a query) will be counted for each retail parity test order and compared between resale and retail. Fields required for Qwest retail customer credit information will not be counted.

This is one of two activities identified in the TSD for the evaluation of the pre-order to

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<sup>2</sup> TR 39, ll. 4-7 (Aug. 7, 2001).

order integration. CGE&Y admitted that its failure to comply with the TSD requirement to count the number of auto populated or selectable fields was “an oversight and we did not comply with it.”<sup>3</sup> CGE&Y did indicate in conjunction with its admission that it failed to count the auto populated or selectable fields that, “we can endeavor to do that and we have the backup information and we can do that.”<sup>4</sup> CGE&Y should be required to complete this important activity.

**2. CGE&Y Failed to Compare the Capabilities of Edit and Error Checking Available to CLECs using the IMA-GUI and EDI to Those of Qwest Retail Representatives Using Retail Interfaces.**

Section 4.1 of the TSD, version 2.8, requires CGE&Y to answer the question:

Are the edit and error checking capabilities available to CLECs using the IMA-GUI and EDI interfaces to create orders substantially the same to the capabilities of a Qwest customer service representative using the retail interfaces[?]

CGE&Y failed to answer this question. Instead of evaluating the relative capabilities, as required by the TSD, CGE&Y only noted “both sides had error-checking capabilities.”<sup>5</sup> CGE&Y did not evaluate whether the relative edit and error checking capabilities were the *same*. CGE&Y “presumed [the relative edit and error-checking capability] was the same.”<sup>6</sup> CGE&Y should be required to complete an evaluation of the relative edit and error-checking capabilities available to CLECs and Qwest retail representatives.

**3. CGE&Y Failed to Compare and Evaluate the Abilities to Request Large Blocks of Telephone Numbers.**

Section 4.2.6, version 2.8, of the TSD requires that CGE&Y complete the following activity:

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<sup>3</sup> TR 252, ll. 3-4 (Aug. 8, 2001).

<sup>4</sup> *Id.*, ll. 4-5 (Aug. 8, 2001).

<sup>5</sup> TR 386-87 (Aug. 8, 2001).

<sup>6</sup> TR 387, ll. 11-12 (Aug. 8, 2001).

The ability to request a large block of TNs, in the same serving area, will be compared between a Qwest Service Representative and a Pseudo-CLEC Service Representative. The number of steps required, the amount of information required and returned, and the timeliness of response will be measured. Performance of the paired test scripts will be coordinated to within 1 minute of each other for this particular comparison.

CGE&Y failed to complete this activity. CGE&Y only noted that when requesting large blocks of TNs, both CLECs and Qwest had to use a manual process.<sup>7</sup> CGE&Y failed to determine, as was required by the TSD, that for both CLEC and Qwest retail representatives, the number of steps required, the amount of information required and returned and the timeliness of response.

CGE&Y did not know if the telephone number that CLEC and Qwest customer service representatives must call to reserve large blocks of TNs is the same or if CLEC and Qwest customer service representatives call the same work center.<sup>8</sup> CGE&Y did acknowledge that all manual processes are not created equal.<sup>9</sup> CGE&Y did not evaluate whether the manual processes for reserving large blocks of TNs for CLEC and Qwest customer service representatives are equal. CGE&Y should evaluate the relative abilities of CLEC and Qwest customer service representatives to request large blocks of TNs.

**4. CGE&Y Failed to Determine if Substantially the Same Ability is Provided to Both the Pseudo-CLEC and Qwest Service Representatives to Query the Status of a Pending Service Order.**

Section 4.1.12, version 2.8, of the TSD requires CGE&Y to answer the following question:

Is substantially the same ability provided to both the Pseudo-CLEC Service Representative and the Qwest Service Representative to query status of a pending service order[?]

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<sup>7</sup> TR 304, ll. 11-16 (Aug. 8, 2001).

<sup>8</sup> TR 304-305 (Aug. 8, 2001).

<sup>9</sup> TR 305, ll. 1-3 (Aug. 8, 2001)

CGE&Y failed to answer this question. Instead, CGE&Y noted that CLEC and Qwest customer service representatives both had the *ability* to query the status of a pending order.<sup>10</sup> CGE&Y failed to evaluate whether the *same* ability to query the status of a pending service order is provided to both the CLEC Service Representative and the Qwest Service Representative. CGE&Y should be required to answer this question.

**5. CGE&Y Failed to Determine if CLEC and Qwest Customer Service Representatives Have Substantially the Same Ability to Expedite Due Dates.**

Section 4.1.8, version 2.8, of the TSD requires CGE&Y to answer the following question:

Is substantially the same opportunity provided to the Pseudo-CLEC Service Representative and the Qwest Service Representative to expedite due dates[?]

CGE&Y has failed to answer this question. CGE&Y determined that a telephone call was required for both CLEC and Qwest customer service representatives in order to obtain expedited due dates. Although CGE&Y may have concluded that both CLEC and Qwest customer service representatives must make a telephone call to request an expedited due date, that does not mean that substantially the *same treatment* is provided once the telephone call is responded to. CGE&Y made no findings or conclusions on the relative abilities to expedite a due date once a telephone call is made to the respective centers.<sup>11</sup> CGE&Y should be required to follow the requirements in the TSD and answer that question.

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<sup>10</sup> TR 385, ll. 1-8 (Aug. 8, 2001).

<sup>11</sup> TR 372-373 (Aug. 8, 2001).

**B. CLEC Customer Service Representatives Using the IMA-GUI Do Not Receive Pre-Order Query Responses in Substantially the Same Time as Qwest Customer Service Representatives.**

When discussing the response time results for IMA-GUI transactions compared to the equivalent transactions using Qwest retail interfaces, CGE&Y found, “[t]he results clearly indicate substantial and significant *disparity of pre-order IMA-GUI response timeliness*, with resale service representatives waiting approximately three times as long for a response as retail service representatives.”<sup>12</sup> CGE&Y conducted further analysis to determine if the “substantial and pervasive timeliness disparities” could be attributed “entirely to legitimate security validations performed on each individually-timed query.”<sup>13</sup> CGE&Y found that, even after making adjustments for security validations, there were “substantial and statistically significant disparity which remains even after making the maximal possible adjustment for potential security validations and other consistent per-individual query differences between resale and retail pre-order query response timings.”<sup>14</sup>

CGE&Y knew that AZIWO1110 covers the disparity of timings between CLEC and retail transactions and that this IWO remains open. CGE&Y’s finding of significant disparity in the response time results coupled with AZIWO1110 still being open should have resulted in the “timeliness” element of its evaluation being considered, at best, inconclusive with results that point towards disparity.

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<sup>12</sup> RPE Report at 23 (emphasis added).

<sup>13</sup> *Id.* at 22-23.

<sup>14</sup> *Id.* at 28.

**C. CGE&Y's Sample Size During the Evaluation of the Timeliness of Maintenance and Repair Transactions Was Too Small to Reach Any Meaningful Conclusions.**

What CGE&Y believed to be constraints on the total sample size used in the retail parity evaluation led to sample sizes that were too small to reach any meaningful conclusion. CGE&Y clearly made this point when it stated:

[B]eing that we had as small a sample size as we did, we did not attempt really to come up with statistically confirmatory evidence of parity or disparity. We are only reporting the results here. There is no conclusive statement of parity or disparity with regard to M&R timeliness in a statistical sense.<sup>15</sup>

The maintenance and repair transactions are another case of inconclusive results which undermine any finding of parity in the timeliness evaluation.

**D. CGE&Y's Findings on the Quantitative Evaluation Portion of the Retail Parity Evaluation Point Towards a Conclusion of Disparity.**

CGE&Y has characterized the quantitative evaluation portion of the retail parity evaluation as the counting of steps and fields necessary to complete various types of orders. CGE&Y's finding on the quantitative evaluation was that "CGE&Y found disparity in the numbers of fields and steps required for a CLEC using IMA-GUI to complete an order (including pre-order steps) versus Qwest; the numbers of fields and steps were greater, across most scenarios, for CLECs."<sup>16</sup>

CGE&Y attempted to mitigate this finding by stating that, with regard to the number of steps and fields, "CGE&Y believes, however, that this disparity is largely accounted for by the guidelines imposed by the Ordering and Billing Forum (OBF)."<sup>17</sup>

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<sup>15</sup> TR 336, ll. 14-20 (Dukes Aug. 8, 2001).

<sup>16</sup> RPE Report at 6.

<sup>17</sup> *Id.*

However, CGE&Y admitted that it had not relied upon any specific OBF guidelines in reaching that conclusion.<sup>18</sup> CGE&Y put forth no evidence in the record or the document viewing room that supports its conclusion that the disparity is largely accounted for by the guidelines imposed by the OBF. In an apparent attempt to provide some explanation as to how it reached its conclusion, CGE&Y stated that, “people who worked on this report either had applicable service center or service rep or service center management or gateway use or construction or design experience.”<sup>19</sup> While it may be true that the CGE&Y representatives that worked on the report had relevant experience, CGE&Y has never explained how that experience was put to use to determine that the OBF guidelines largely imposed the disparity of fields and steps. CGE&Y’s “expert” testimony does not comply with generally recognized rules on providing expert testimony.

If the witness is relying solely or primarily on experience, then the witness must explain how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is reliably applied to the facts. The trial court’s gatekeeping function requires more than simply “taking the expert’s word for it.” See *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311, 1319 (9<sup>th</sup> Cir. 1995) (“We’ve been presented with only the experts’ qualifications, their conclusions and their assurances of reliability. Under *Daubert*, that’s not enough.”)<sup>20</sup>

CGE&Y’s experts failed to meet these guidelines. CGE&Y experts failed to give their experience, explain the Qwest system, identify specific OBF guidelines and explain how, based on the OBF guidelines, Qwest’s specific processes suffered from relying on the specifically-identified guidelines.

CGE&Y eventually issued AZIWO1111 as a means of documenting the disparity of fields and steps. This IWO remains open. Given that AZIWO1111 remains open and

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<sup>18</sup> Ex. CGE&Y 3, question 6.

<sup>19</sup> TR 348, ll. 18-21 (Aug. 8, 2001).

<sup>20</sup> Fed. Rules of Evidence, Rule 702, Advisory Committee Notes, 2000 Amendments.



CGE&Y has not provided any evidence that can reasonably attribute any disparity in the number of steps and fields to OBF, the most that can be said about the quantitative element of CGE&Y's retail parity evaluation is that the results are inconclusive, pointing towards disparity.

**E. CGE&Y's Qualitative Evaluation Is Incomplete and Does Not Support a Conclusion of Substantially the Same Qualitative Experience In Submitting an Order.**

In section 4.1 of the TSD, there are fourteen questions that, when answered, will provide evidence on the qualitative portion of the retail parity evaluation. As was previously discussed, CGE&Y failed to completely answer five of the fourteen questions.<sup>21</sup> For three of the questions, CGE&Y indicated that the evaluation objective was not satisfied.<sup>22</sup> With so many unanswered questions and so many unmet objectives, the most that can be concluded is that the qualitative portion of the retail parity evaluation is inconclusive.

### **III. CONCLUSION**

CGE&Y claims that Qwest is providing non-discriminatory access to its OSS based upon its quantitative, qualitative and timeliness evaluations. A close examination of each of those three elements shows significant problems or significant unanswered questions. It takes much longer for CLECs to execute pre-order transactions, it takes CLECs many more steps and many more fields to create service orders and key qualitative questions remain unanswered. Despite numerous requests by the CLECs of CGE&Y during the Retail Parity Evaluation Workshop to explain how evidence that

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<sup>21</sup> TSD, § 4.1, questions 3, 6, 8, 11 and 14.

<sup>22</sup> *Id.*, questions 2, 3 and 9.

supports negative timeliness findings, negative quantitative findings and inconclusive qualitative findings can result in an overall positive nondiscrimination finding, CGE&Y never provided a reasonable explanation. It is AT&T's position that the evidence overwhelmingly supports a finding of discrimination.

Submitted this 7th day of September, 2001.

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